CF0000058371

(2)

Cr.A. 1788/95

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Criminal)

No. 29924 Name ओमप्रकाश पोद्दी

Father's name हजारीराम ओंकारमालिक कामराज भाग्या धुरवे

Residence रामपुर (मण्डला) Age 30 वर्ष

Sentenced to आजीवन कारावास On 22/11/95

Under section 302 भा.दं.वि. by द्वितीय अपर सत्र न्यायाधीश रामपुर

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 22/11/95

2 Date on which copy received 23/11/95

3 Date on which Appeal sent 1.12.95

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 29924 Name ओमप्रकाश पोद्दी/हजारीराम

Confined in Jabalpur Jail रामपुर (मण्डला)

No. Cr. 0 1404 - Dated 1995 8/12/95

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अपर सत्र न्यायाधीश रामपुर (मण्डला)
मा.उ.-1993

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

दण्डादेश; मिथ्या-अभिलेख
धा.प.सं. 302/94.

Superintendent
अधीक्षक,
Jail
केन्द्रीय जेल, रामपुर (म.प्र.)

Date of receipt in ..... Office

Date of receipt record to accompany the ..... Memo In time

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
15 DEC 1995
Reg. No. 9234
Receipt Clerk
High Court, Jabalpur

(P. T. O.)

(19)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 1788OF 1995

Shyamlal alias Choti

Vs.

State of M.P.

JUDGEMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI L.C.BHADOO ,J.

Sd/-
L.C. BHADOO
Judge

POST FOR JUDGMENT ON 24th JANUARY 2006

Sd/-
Dhirendra Mishra
Judge

(13)

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 1788 of 1995

Appellant : Shyamlal @ Choti

Vs.

Respondent : The State of Madhya Pradesh

Shri Avinash K. Mishra, learned counsel for the appellant.
Shri M.P.S. Bhatia, learned Panel Lawyer for the State/respondent.

JUDGMENT
(Delivered on 24th January 2006)

Per Dhirendra Mishra, J

The appellant has preferred this appeal as he is convicted by the learned IV Additional Sessions Judge, Raipur in Sessions Trial No. 358/94 vide judgment dated 22.11.1995 under Section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment for causing death of deceased Thanuram.

2. Case of the prosecution, in brief, is that the deceased and the appellant were related to each other. There was some dispute between them in relation to land. Prior to the date of incident i.e. 11.04.1994 Gram Panchayat election was scheduled to held. When the appellant went to the deceased to seek his vote for a candidate namely Mohan, the deceased had scolded him and because of the above animosity on 11.05.1994 at about 6.00-7.00 a.m. when the deceased was returning after attending the call of nature, the appellant quarreled with him and gave several blows with knife over neck of the deceased which was witnessed by several persons present there. The appellant fled from the scene of incident and thereafter surrendered in the police station and gave intimation of Ex.P/7-A which was recorded in the daily diary of the Police Station-Chura. The appellant was medically examined by the

police vide document of Ex.P/9 as he had also sustained some injuries in the said incident. As a result of the assault the deceased fell on the ground and died on the way when he was being taken to the hospital. Kaliram (P.W.15), son of the deceased lodged the First Information Report (Ex.P/14) on the same day whereupon Crime No. 41/94 under Section 307 of the IPC was registered. During investigation inquest report of Ex.P/3 was prepared over the dead body in the presence of the witnesses, the dead body was sent for postmortem and Dr. Sanjay Verma (P.W.5) conducted postmortem and submitted his report of Ex.P/5. During postmortem the doctor found three incised injuries over the neck, one incised injury over the left scapular region, one incised injury over the left palm and one injury over the joint of wrist of the deceased. All the injuries were reported to be ante-mortem in nature and also found platysma muscle and common carotid artillery cut. According to the opinion of the doctor the cause of death was due to shock and hemorrhage and rupture (tear) of vessels (carotid and jugular). On the basis of memorandum (Ex.P/15) of the appellant the weapon of offence i.e. bloodstained knife and torn pieces of bloodstained lungi were seized vide document of Ex.P/1. Apart from the above seizure on the basis of said memorandum, bloodstained vest was also seized vide Ex.P/8. The knife seized from the appellant was sent to the doctor whereupon he opined that the injuries caused on the person of the deceased may be caused by the said knife and advised for chemical examination of the seized weapon. The bloodstained shirt was also seized from the appellant vide Ex.P/11, bloodstained soil and plaint soil apart from other articles lying near the place of incident were seized vide Ex.P/12. The spot map of Ex.P/23 was prepared by the investigating officer and the seized articles containing bloodstains were sent for chemical examination to the Forensic Science Laboratory vide document of Ex.P/24. The opinion of the serologist is Ex.P/25. After concluding the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Gariyabandh who in turn committed the case to the Sessions Judge, Raipur which was received by the learned

Additional Sessions Judge on transfer for trial. Charge under Section 302 of the IPC was framed. The appellant abjured his guilt.

3. The prosecution in support of its case examined 23 witnesses. The learned trial Court recorded statement of the accused/appellant under Section 313 of the Cr.P.C. The appellant denied the circumstances appearing against him. The learned trial court after hearing the Additional Public Prosecutor and counsel for the appellant convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submits that there is no admissible evidence available on record to show that the appellant inflicted knife injuries over the neck of the deceased as a result of which he died. However, learned trial Court has held the appellant guilty of the above offence on the basis of presumption and further on the basis of statements of child witnesses namely Ku. Vimlabai (P.W.21) aged about 8 years, Manohar Kumar (P.W.13) aged about 13 years, Kunwar Bai (P.W.14) aged about 10 years, Yashoda Bai (P.W.22) aged about 9 years-daughter of the appellant, who are alleged eyewitnesses. The Court below looking to the age of the above child witnesses did not administer oath to them and recorded their statements after putting preliminary questions to them. According to these witnesses the incident took place at about 6.00 a.m. near the well near the house of Shyamlal. He further submitted that Manohar Kumar(P.W.13) has stated that Mohan came to him running and informed that the deceased and the appellant are involved in scuffle whereupon he went to Kaliram and informed him about the quarrel. Thereafter, he and Kaliram reached the place of incident and found that Thanuram had fallen on the ground, Shyamlal had fled away and Thanuram was not able to speak and thus Manohar Kumar is not an eyewitness to the incident. P.W. 14 Kunwar Bai has stated that when she was on the tree and Sulochana was standing under the tree she saw that the appellant and the deceased were involved in a scuffle. She further stated that during scuffle appellant downed the deceased twice on the ground whereas

the deceased downed the appellant once. After the said scuffle she saw the accused going towards his house and from there towards the forest whereas deceased Thanuram was holding his neck and screaming " oh' mother, oh' mother" and fell at a short distance. Vimla Bai (P.W.21) did state anything in her examination-in-chief and states that she does not recognize Shyamlal or the deceased and she does not know anything about the incident as she did not witness the same. However, she was cross-examined by the prosecution with the permission of the Court and in the cross-examination she has stated that she and her friend Yashoda were standing in the verandah when Thanuram and the appellant came there and involved in a scuffle. The appellant downed the deceased, the appellant was holding knife and he assaulted Thanuram with the knife and fled from there leaving his bicycle. In the cross-examination she has further stated that the appellant and the deceased were involved in a "*mar-peet*". P.W.22 Yashoda Bai is also a witness to the fact that her father-the appellant came there on a bicycle and the deceased and the appellant were involved in a scuffle and thereafter the appellant fled from there leaving his bicycle.

5. Learned counsel for the appellant further argued that apart from the above four witnesses, the prosecution examined Jemini Priye Mishra (P.W.1) who is a witness to the fact that she learnt from Rajo Bai that the appellant has killed the deceased whereupon she reached the place of incident and found the deceased lying unconscious writhing. The above witness nurse by profession gave him preliminary treatment after bringing medicine from her house. P.W. 2 Pardesiram is a witness to the fact that he learnt from one Lagan about the incident that the appellant had killed Thaunram and whereupon he reached the place of incident and found Thanuram lying in the lane of Shyamlal and Thanuram was bleeding. P.W.3 Kashiram, P.W. 4 Prem Singh, P.W. 8 Basant Kumar-son of the deceased, P.W.9 Chaitram are witnesses to the fact that on hearing that Shyamlal has assaulted Thanuram they

reached the place of incident and found the dead body of Thanuram lying on the place of incident and the appellant has fled from there. P.W. 4 Prem Singh has also stated that 2-3 stab injuries were present over the neck of the deceased. P.W. 2 Pardesiram and P.W. 18 Jagturam are witnesses of the fact that Mohan and Shyamlal had gone to the house of the deceased to seek his vote on the previous day of the incident and on the next day they learnt that Thanuram has died and the appellant has killed him.

6. Learned trial Court has convicted the appellant by recording a finding that death of Thanuram is homicidal in nature and fatal injuries present on the person of deceased Thanuram were caused by the appellant and the above injuries were caused with an intention to cause his death and accordingly convicted the appellant as described above. The above finding of the trial Court is based on the statements of child witnesses namely P.W. 13 Manohar Kumar, P.W. 14 Kunwar Bai, P.W. 21 Ku. Vimla Bai and P.W. 22 Yashoda Bai. The learned trial Court has further held that the prosecution has not been able to prove the motive for committing the above offence and the motive regarding election related dispute attributed to the appellant is not sufficient for causing death of the deceased. However, in the cases of murder it is not necessary for the prosecution to establish motive for commission of offence.

7. On the other hand, learned counsel for the State supported the judgment of the trial Court.

8. It is not disputed that death of the deceased was homicidal in nature. Even otherwise in the postmortem report of Ex.P/5 the doctor has opined that the cause of death was due to shock and hemorrhage and rupture (tear) of vessels (carotid and jugular).

9. The only question which remains to be adjudicated by this appeal is- whether the prosecution has been able to establish that the injuries

present over the person of the deceased were in fact caused by the appellant?

10. From the statement of eyewitness P.W.14 it is established that at the time of incident the appellant and the deceased were involved in a scuffle and immediately after the scuffle the deceased was holding his neck and screaming "Oh' mother, Oh' mother" and fell at a short distance. Thereafter the appellant went to his house and from there escaped towards the forest.

11. The statement of the above witness is duly corroborated by the statements of P.W.13 Manohar Kumar, P.W.15 Kaliram and also from the statement of P.W.22 Yashoda Bai-daughter of the appellant. It is further established that immediately after the above incident Jemini (P.W.1), Kashiram(P.W.3), Basant Kumar (P.W.8), Durjan Singh (P.W.11) and Kaliram (P.W.15) reached the place of incident and found that Thanuram had sustained injuries over his neck and they learnt that the appellant had caused the said injuries to Thanuram by knife. P.W. 1 also stated that when she reached there the deceased was found writhing.

12. The appellant firstly fled towards forest and thereafter surrendered before the police and lodged the report of Ex.P/7-A. On the basis of memorandum of the appellant bloodstained knife and lungi were seized from him and as per report of the serologist the lungi seized from the appellant contained human blood.

13. It is settled law that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is any easy prey to tutoring. However, the Court below has not committed any illegality by relying upon the statement of P.W. 14 as the statements of above witnesses appear to be natural and it inspire confidence. Apart from this the statements of above witnesses are duly

corroborated in material particulars by the other witnesses who arrived at the place of incident immediately after the incident as described above.

14. Thus in the light of the aforesaid evidence, we are of the opinion that the prosecution was able to establish that the injuries present over the person of the deceased were in fact caused by the appellant which resulted in the death of the deceased.

15. Now the third question is whether the prosecution has been able to establish by leading cogent evidence that the appellant caused the above injuries to the deceased with an intention to cause his death.

16. From the evidence available on record, it appears that the prosecution has not been able to establish the origin and the genesis of the incident. From the evidence on record it is not established that there was enmity between the two and the incident took place on the spur of moment without premeditation. It is not established by the prosecution as to how the quarrel began between the appellant and the deceased, who opened the assault and under what circumstances and at what point of time the appellant assaulted the deceased with knife. In the absence of any convincing evidence with respect to the circumstances under which the appellant inflicted above injuries with knife over the deceased which ultimately resulted in his death, the possibility of the appellant inflicting the injuries in self defence cannot be ruled out particularly in the light of the fact that as per Ex.P/7-A the appellant had also sustained injuries over his hand. However, looking to the nature of injuries present over the neck of the deceased, we are of the opinion that the appellant had the knowledge that the injuries caused by him are likely to cause death of the deceased.

17. Thus on the basis of aforesaid analysis, we are of the considered opinion that the judgment of conviction of the appellant under Section

302 of the IPC is erroneous and cannot be sustained. Accordingly the same is set aside. Instead thereof, we hold the appellant guilty of offence under Section 304-II of the IPC and sentenced him to undergo RI for ten years. However, as the appellant is in jail since 11.05.1994 and as such he has already completed more than 11 years jail sentence, therefore, the appellant is directed to be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge